

The Already Forgotten Freedom of the Seas

BEFORE the Peace Conference convened at Paris to reconstruct the world after the Great War, it was generally expected that one of the principal subjects for consideration there would be the Freedom of the Seas. Such was evidently the expectation of Miss Louise Fargo Brown when she was writing her historical essay thus entitled, which comes to us from the press of E. P. Dutton & Co.; and such was the view also of Sir Thomas Barclay of Paris, the well known international lawyer, whose volume entitled *Collapse and Reconstruction* contains an instructive chapter on *Freedom of Navigation* which leads us to notice the two books in one and the same article.

In prescribing the programme of the world's peace—"Our programme, the only possible programme, as we see it"—President Wilson placed the Freedom of the Seas only second in importance to "open covenants, openly arrived at," as appears from Article II. of what Clemenceau calls the fourteen commandments:

"II. Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants."

Either because of doubt as to its meaning or apprehension as to its possible interference with their national interests, England and France declined to accede to this article as one of the bases of the armistice with Germany. Since their refusal thus to treat it as an acceptable definition of the Freedom of the Seas, the subject has dropped out of diplomatic consideration or discussion. President Wilson does not appear to have pressed it upon the attention of the Paris Conference and the other nations represented at the peace table seem to have been content to let well enough alone.

II.

Miss Louise Fargo Brown characterizes that part of President Wilson's programme which deals with the Freedom of the Seas as the most dangerous of the President's utterances. She admits that "the dream of an American navy which will in perpetuity act in harmony with the British navy, without evoking the jealousy of the rest of the world, is a beautiful one—for an Anglo-Saxon"; but she doubts whether France or Italy will always be content to be permanently inferior to England upon the sea. In her judgment the only possible solution for the maritime problems raised by the war is the international control of the high seas, exercised by an international fleet acting under a league of nations. In addition to international machinery for enforcing the law of the sea Miss Brown would have an international tribunal to punish violations thereof. These are the practical conclusions of one who has evidently been a conscientious student of a difficult subject, and whose book reads like the painstaking essay of a post-graduate candidate for a doctor's degree in philosophy. The book is a commentary upon history rather than a complete historical narrative of the successive conflicting claims to the sovereignty of the seas; and it often assumes a knowledge on the part of the reader which every one does not possess.

Take, for example, the interesting reference to the celebrated "War on Jenkins's Ear." Miss Brown tells us that "modern research has established beyond any reasonable doubt the important fact that the immortal Jenkins did actually have his ear sliced off by a Spaniard who was searching his ship for smuggled goods"; and she excites our curiosity still further by quoting the doggerel verse of that day which recited the incident in the lines:

"Jenkins's ear was cut off clean,

The case is clear, the knife was keen."

The story of the War of Jenkins's Ear could have been briefly told, certainly to the interest and probably to the surprise of the reader. In 1731—a year before Washington was born—Capt. Robert Jenkins was the commander of the English brig *Rebecca*, engaged in trade with the West Indies. Spain at that time claimed exclusive control over all commerce with the West Indian islands; and on his homeward voyage Capt. Jenkins was attacked by a Spanish guarda-costas, whose commander looted his cargo and cut off one of his ears. At first the outrage attracted little serious attention, although Capt. Jenkins appealed personally to the King; his enemies declared that he had lost his ear in the pillory. So insistent was Jenkins, however, that

in the course of time he obtained the ear of the House of Commons, to whose members he exhibited the severed ear; his story gained credence and provoked widespread indignation throughout the realm; and the incident, insignificant as it seemed in the beginning, was one of the principal causes, if not the chief cause, of the war between England and Spain which broke out in 1739. It seems strange that an author who expects her readers to know all about the War of Jenkins's Ear should on the other hand deem it necessary to inform them that "a Dutch lawyer named Grotius wrote a learned treatise on the law of prize." Most people capable of appreciating her book at all would know who Grotius was without thus being told. They hardly require to be informed that the writings of "a Dutch lawyer named Grotius" are classics in international law, especially that part of it relating to the Freedom of the Seas.

These points, however, do not detract from the substantial interest and value of Miss Brown's book, which will prove useful to all students desiring to inform themselves concerning a subject of worldwide importance which is certain to come to the front again, although for the moment apparently forgotten.

III.

Let us now turn to the *Collapse and Reconstruction* of Sir Thomas Barclay and consider what a modern authority of recognized standing in international jurisprudence has to say in his chapter on *Freedom of Navigation*.

For many years there have been two Sir Thomas Barclays in the English knightage: the present author, a lawyer residing in Paris, who has devoted much effort for many years before the Great War to the promotion of friendly relations between Great Britain and Germany, France and the United States, and who visited this country in 1903 in furtherance of arbitration treaties between the British Government and ours; and Sir Thomas Barclay of Birmingham, a venerable chemist, druggist and pharmacist, distinguished for his public spirit in promoting the introduction of good water into Birmingham. No other European jurist that we know of has discussed President Wilson's supposed sea policy as critically as the Sir Thomas Barclay of Paris; and his competency to exercise the province of a critic in such matters will be generally acknowledged even by those who may not accept his views on the particular question under consideration.

Sir Thomas Barclay confesses that he feels some anxiety in approaching President Wilson's second proposition, wherein he demands absolute freedom of navigation "alike in peace and in war." He points out that freedom of navigation is positively incompatible with war and that this proposition accords with the traditional policy of the United States no less than with that of Great Britain. There cannot be absolute freedom of navigation when the right of search for contraband and to seize blockade runners exists, as it does in time of war. Such right was recognized by the Hague Conferences of 1899 and 1907 by the United States, which endeavored on both occasions to secure the adoption of a resolution in these words:

"The private property of all subjects or citizens of the signatory Powers, with the exception of contraband of war, shall be exempt from capture or seizure on the High Seas or elsewhere by the armed vessels or the military forces of any of the said signatory Powers. But nothing herein contained shall extend exemption from seizure to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of any of the Powers."

Here we sought to have it made plain as a pikestaff that the United States did not expect the sea to be made free in time of war for carriers of contraband or breakers of blockades; yet when Mr. Wilson took his ready pen in hand to indite the fourteen commandments, he apparently forgot our attitude at The Hague and advocated a policy which would operate most adversely to the interests of this country as a belligerent. "Perhaps President Wilson means something new," says Sir Thomas Barclay. Perhaps he does, but what is it?

IV.

Our English friend finds it equally difficult to comprehend what the President means in regard to freedom of navigation in time of peace. The old notion that by right of discovery or otherwise a

nation could acquire sovereignty over great tracts of the ocean outside contiguous territorial waters has long since become obsolete. There was, therefore, no occasion to protest against any possible claim of that sort. The President recognizes the propriety of certain covenants between nations which limit the freedom of the sea, more or less, in time of peace;—such, for example, as fishery agreements, conventions to regulate or prevent the sale of intoxicants at sea, and arrangements for the suppression of the slave trade. "Otherwise, absolute freedom of navigation exists everywhere."

This being the case, Sir Thomas Barclay asks whether the President can possibly have in mind the German contention that there is no real freedom of the sea unless independent coaling stations are available for the use of every nation having a considerable merchant marine. "Does he mean that the power to close the Mediterranean or the Suez Canal or the Panama Canal or the Dardanelles are restrictions on the freedom of navigation? Does he mean any or all of these?"

Assuming that President Wilson means them all, Sir Thomas Barclay declares that it is not an unreasonable contention that a maritime nation should enjoy facilities for coaling its steamers without recourse to foreign air or exposure to foreign interference. He agrees with the President that the Dardanelles "should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees," provided the guarantees were physically effective, such as would be insured by the presence at the Strait of an international commission sitting permanently on the spot. As to the proposal to internationalize the Suez and Panama Canals, he thinks there is a great deal to be said in favor of the suggestion. The idea is that they should never be liable to be closed against any one but should be as free for traffic as the ocean itself. Inasmuch as they are already supposed to be open to all the

world on equal terms, the need of any further change is not obvious. Indeed, our author takes quite a different view concerning Gibraltar. The Rock will dominate the Straits as long as it exists. "It is practically an island and has been for over two hundred years a British possession. Its importance for most nations is that possession of it should not be abused. England has exercised her possession in keeping the Straits open. Can any other State be trusted to conduct itself better?" Certainly the United States has no reason to prefer any other custodian.

Sir Thomas Barclay deems it unlikely that President Wilson's second commandment was a drive at what is called "England's Mastery of the Sea"; inasmuch as that mastery has never been exercised in time of peace adversely to the interests of any self-respecting States. "England's supremacy at sea has no reference to objects of conquest or coercion, but is a necessary consequence of her island position and the insufficiency of her possible food supply to meet the requirements of a population far exceeding any prospective increase of such food supply from domestic sources." All the old ideas of exercising dominion over any area of the sea are truly declared to be dead and no one knows this better than President Wilson.

In this notice of Sir Thomas Barclay's *Collapse and Reconstruction* we have confined ourselves to his observations on a single subject, *The Freedom of Navigation*; but its other contents render the volume well worthy of study and consideration. They embrace almost every subject relating to international reconstruction which would naturally occur at this time to a writer who has made a lifelong study of the law of nations.

THE FREEDOM OF THE SEAS. BY LOUISE FARGO BROWN. E. P. Dutton & Co. *Collapse and Reconstruction: EUROPEAN CONDITIONS AND AMERICAN PRINCIPLES.* BY SIR THOMAS BARCLAY. Boston: Little, Brown & Co.

About "The Moon and Sixpence"

TO THE EDITOR OF BOOKS AND THE BOOK WORLD—Sir: Notwithstanding your timely course in *What Every Publisher Knows* (and some editors), there are two things about the new Maugham novel which we cannot resolve for ourselves.

The Moon and Sixpence is unquestionably a piquant title and we have long since passed the stage where we look for an obvious connection between a book and its title. But some relation, surely, however recondite, there must be. In this instance we must confess both the moon and the money refuse to divulge their secret. Can the larger wisdom of *Books and the Book World* relieve our distress? Is Maugham spoofing us or is he merely setting a new fashion in fiction handles or are we merely dull? Why not Art and a Ha'penny?

Again, we are somewhat at a loss to account for the unanimous commendation with which the professional reviewers have greeted this extraordinary novel. Where the critics are a unit in assessing merit the public blindly follows, but the judicious are more wary. *The Moon and Sixpence* is beyond cavil an unusual performance and an arresting book. But not, I venture I think, on the grounds supplied by Brown, N. P. D., et alii.

Charles Strickland is a monster, not a man. While Mr. Maugham has put us all under his debt by the courage of his realism in presenting genius as neither heroic nor beautiful in a conventional sense, still we cannot accept his hero as a man of flesh and blood. Stripped of the realistic rags in which his creator dresses

him, he emerges a lay figure, compounded of all the nastiness of which only human nature in extenso and not in individuo is capable. An individual so utterly inhuman as Strickland would die of his own nastiness. Realism that fails to relate is worse than romanticism run to seed. The latter betrays no one, but the former is an outrage on our common humanity.

Life denuded of its conventions and the vital lies which make it lovable as well as livable is both brutal and unmoral. But nature, to say nothing of society, would have to suppress so unnatural a fiend as Charles Strickland. Art and genius are hard taskmasters and no doubt play havoc with our accepted standards, but if they are human—and if they are not they have no significance for us—must respect the natural decencies, not to say pieties (in the old Roman sense) of human nature, if they are intended for our guidance. It seems to me a lamentable failure in a book so stuffed with wit and wisdom, so resplendent with fine characterizations, where tragedy treads so close upon human foibles, that the central figure of the book should leave us not merely with a supreme disgust for the workings of genius but with a positive disbelief in the ultimate worth of art itself.

No matter what additional merits a book may have, no novel which undermines faith in the fundamental goodness of human nature deserves the intemperate praise, the unqualified acclaim which have marked the American appearance of *The Moon and Sixpence*.

EDMUND C. RICHARDS.

New York, August 5.

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